No. 10-1168

In The
Supreme Court of the United States

WILLIAM A. HAWKINS,

Petitioner,

v.

CITICORP CREDIT SERVICES, INC., and
MARGOLIS, PRITZKER, EPSTEIN & BLATT, P.A.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

BRIEF IN OPPOSITION FOR MARGOLIS, PRITZKER, EPSTEIN & BLATT, P.A.

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QUESTIONS PRESENTED

1. Whether Petitioner's action was properly precluded based on a finding of res judicata under Maryland law, when the parties are the same or are in privity, the claim had earlier been presented in the prior action and a final judgment on the merits had been entered.

2. Whether this Respondent violated the Fair Debt Collection Practices Act ("FDCPA") and Maryland Consumer Debt Collection Act ("MCDCA") by collecting interest at a rate in excess of seven percent (7%), allegedly in violation of the National Bank Act.

LIST OF PARTIES

1. Petitioner, William A. Hawkins, by his next friend and wife, Ida Hawkins, individually and on behalf of all others similarly situated.

2. Respondent, Citicorp Credit Services Inc. (USA).

3. Respondent, Margolis, Pritzker, Epstein & Blatt, P.A.

STATEMENT OF THE CASE

Citibank (South Dakota), N.A., by its attorneys, Margolis, Pritzker, Epstein & Blatt, P.A., obtained a judgment for principal and interest (in excess of 7%) against Petitioner in the Baltimore City District Court for the State of Maryland, for monies due on a credit card account. That decision was appealed to the highest courts in the State of Maryland and affirmed.

Thereafter, Petitioner filed an action in the Circuit Court for Baltimore City, Maryland, involving the same parties (including counsel in privity), and the same claim. The substance of the action was the allegation that the judgment, including the interest in excess of 7%, was illegal and violated the FDCPA and the MCDCA.

REASONS WHY THE WRIT SHOULD BE DENIED

I. Res Judicata

Not only has Petitioner had his day in court, he exhausted his appellate remedies in the State of Maryland, and thereafter, attempted to re-litigate the same issue in a subsequent proceeding which he brought in another Maryland court, which was transferred to the United States District Court for the District of Maryland.

That Court found that all parties to the action were parties to the State adjudication (including the law firm which the Court found to be as being in privity with Citibank). The Court further found that the claim arose from the same series of transactions which had earlier been decided. The Court determined, therefore, that the State adjudication was a final judgment on the merits, as required by Maryland law. The Court further stated that any subsequent action was precluded under principles of res judicata, because there could be a threat of nullification of the judgment, or an impairment of rights. In *Sheahy v. Primus Auto. Fin. Serv., Inc.*, 284 F. Supp. 2d 278 (D. Md. 2003), similar facts were presented regarding a judgment against a debtor in a Maryland state court. The debtor filed another action in the Federal court alleging various FDCPA and MCDCA violations. It was held that res judicata barred that debtor's claims. That case, almost directly on point, clarifies Maryland's res judicata law, despite Petitioner's attempts to allege otherwise.

Since Petitioner has been precluded from pursuing a "second bite at the apple" by the United States District Court for the District of Maryland, affirmed by the Fourth Circuit Court of Appeals, Petitioner should be precluded from any further proceedings in this matter, and his Petition for Writ of Certiorari should be denied.

II. Stare Decisis

Petitioner also attempts to obtain certiorari by claiming a disagreement with the holding in *Daggs v. Phoenix National Bank*, 177 U.S. 549 (1900). Despite Petitioner's attempts, the *Daggs* case has long been settled law and has repeatedly been cited and upheld. *Fisher v. First National Bank of Omaha*, 548 F.2d 255, 259-261 (8th Cir. 1977); *Hiatt v. San Francisco National Bank*, 361 F.2d 504, 506-507 (1966), as well as by various state courts, *Citibank South Dakota, N.A. v. Shapiro*, 2010 Mass. App. Div. 275 (2010); *Citibank South Dakota v. Machleid*, 154 Wn. App. 1033 (2010).

There is no conflict between Courts of Appeal or State Courts of last resort, and no important questions of Federal law exist in that the law has been well settled by *Daggs* since 1900. Therefore, no basis exists for the Court to grant Petitioner's Petition for Writ of Certiorari, and same should be denied.

CONCLUSION

For all the foregoing reasons, Margolis, Pritzker, Epstein & Blatt, P.A., Respondent, respectfully

requests Petitioner's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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